THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 26.04.2007

+ **WP(C) No.14903/2006**

PARLE BISCUITS PVT. LTD. (SUGAR DIVISION) ...Petitioner

- versus -

UNION OF INDIA & OTHERS ...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Valmiki Mehta, Sr Advocate with Mr Asheesh Jain and Mr Manmohan Singh

For the Respondents : Mr P.P. Malhotra, ASG with Mr Pushkar Sood and Mr Varun Kathuria

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J

1. The petitioner (Parle Biscuits Pvt Ltd) contends that it is a leading biscuit manufacturer having biscuit manufacturing plants in different States and having a total capacity of 4,50,000 MT biscuits per year. The petitioner is aggrieved by the order dated 17.08.2006 passed by the Chief Director (Sugar), Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, Government of India. The petitioner had represented to the said authority to exempt it from the statutory levy obligation

of 10% in respect of the sugar manufactured by it. The petitioner had also represented that the operation of the Regulated Release Mechanism of the Government be not made applicable to the petitioner. The first part of the petitioner's request pertains to levy sugar and the second part pertains to non-levy of free-sale sugar.

2. The petitioner seeks the benefit of the Sugar Incentive Scheme, 1997 with regard to its plea of exemption from the stipulation relating to 10% levy sugar. With regard to the free sale sugar or non-levy sugar, the petitioner contends that its sugar unit at village Parsendi, Tehsil Kesarganj, District-Baharaich (U.P.) is entirely for captive consumption and the sugar produced there is not for sale in the market, therefore, it ought to be exempted from the Regulated Release Mechanism of the Government which is operated on the basis of monthly release orders issued under the Essential Commodities Act, 1955 (hereinafter referred to as 'the said Act'). The argument with regard to the non-levy or free-sale sugar is that the provisions of the Regulation pertain to producers of sugar, who, according to the petitioner, are manufacturers who produce sugar for the purpose of selling them in the market and does not cover manufacturers such as the petitioner who produce sugar in their units for the purposes of captive consumption only and not for carrying on the business or trade in sugar.

3. Earlier, the petitioner had filed a writ petition No.5584/2006 wherein similar prayers, as in the present case, had been made. This court, by an order dated 17.04.2006 passed in the said writ petition directed the respondents to dispose of the representation of the petitioner by a speaking order within four weeks. Thereafter, the petitioner was given an opportunity of hearing. It was contended in their representation and through the submissions before the respondents that the petitioner was a leading biscuit manufacturer in India and that their need for sugar was very high and because of this, they had set up a sugar manufacturing plant at Parsendi for producing sugar to be utilised for their main product-biscuits. It was also represented that they intended to use the entire sugar produced at the said unit at Parsendi for manufacturing biscuits. On the basis of this, it was represented by the petitioner that the petitioner should be exempted from the system of Regulated Release Mechanism being operated by the Central Government. Additionally, it was also represented by the petitioner that the petitioner should be exempted from the statutory levy obligations of 10% also. As noted in the impugned order dated 17.08.2006, the petitioner represented that the following two concessions be granted by the Government:-

> "i) The petitioner should be exempted from the operation of the Regulated Release Mechanism of the Government;
>
> ii) The petitioner should not be subjected to statutory levy obligation of 10%."

The first concession was sought on the ground that since the entire production was required for captive consumption for the purposes of manufacturing biscuits, the exemption ought to be granted and the petitioner be allowed to use the sugar so produced by it. The second concession with regard to levy sugar was being claimed on the ground that the petitioner did not fall within the ambit of the provisions of Section 3 (2) (f) of the said Act as the petitioner was not producing sugar for the purposes of selling, but for captive consumption. It was additionally contended that the petitioner was also covered under the Incentive Scheme, 1997 under which sugar mills were exempted from the levy obligation for a period of 5 to 8 years depending upon the location of the sugar mills.

4. With regard to the concession sought in respect of non-levy (free-sale sugar) from the Regulated Release Mechanism, the Chief Director (Sugar), after discussing various provisions of the said Act, came to the conclusion that there is no provision in law enabling him to give exemption to any sugar mill from the Regulated Release Mechanism Policy of the Government and it did not matter as to whether the petitioner sold the non-levy component of the sugar produced by it in the market or used it captively for the production of biscuits. It was observed in the impugned order that the full quota of the monthly sugar released to them could be utilised by the petitioner for its captive consumption

in the biscuit manufacturing units owned by it or at the option of the petitioner could be sold in the open market.

5. The Chief Director (Sugar) repelled the arguments with regard to levy sugar by observing that the "status" required under Section 3 (2) (f) of the said Act is that a person should be a producer of sugar or should be holding stocks in sugar or in the business of buying or selling of sugar. If he is one such person, then the obligation with regard to levy sugar would have to be met. It was further observed that it is nowhere stipulated that levy sugar can be requisitioned from a producer of sugar only when he is engaged in the business of selling the sugar. It was further held that the petitioner was a producer of sugar within the meaning of explanation given below sub-section (3E) of section 3 of the said Act.

6. With regard to the second submission in respect of levy sugar, it was observed in the impugned order that the petitioner did not fall within the Incentive Scheme, 1997. It was observed that on 26.02.1997, the Central Government announced the Incentive Scheme under the title "Incentive Scheme for the New Sugar Factories and the Exports Projects licenced / to be licenced after 31.03.1994" so as to provide incentives to help entrepreneurs in setting up new and additional capacity for the manufacturing of sugar, expeditiously, on the basis of Letters of Intent / licence issued after 31.03.1994. The incentives

were to be for a period of 5 or 8 years depending upon the location of the sugar mills. In the impugned order, it is observed that *"to be eligible under the Incentive Scheme, a new sugar factory must hold a Letter of Intent / licence issued after 31.03.1994"*. With reference to clause 2 (a) of the scheme, it was observed in the impugned order that "new sugar factory" means a sugar factory established for the first time by erection of a new standard sugar plant in accordance with the Letter of Intent / Industrial Licence issued by the Government of India, Ministry of Industries under Section 11 (1) of the Industrial (Development and Regulation) Act, 1951. It was observed that the petitioner did not hold a Letter of Intent / Industrial Licence issued under Section 11 (1) of the Industrial (Development and Regulation) Act, 1951 and as such, it was not covered under the Incentive Scheme of 1997. It was also observed that the Incentive Scheme of 1997 was not applicable to sugar mills which had come up after the delicencing of the sugar industry in August, 1998. The Incentive Scheme, 1997 was, according to the respondents, operational only during the licencing period and did not extend to sugar units / mills which were established, after the delicencing of the sugar industry, upon filing of Industrial Entrepreneur Memoranda (IEM). The petitioner fell in the latter category, being a unit established after the delicencing of the sugar industry in August, 1998. Accordingly, it was held in the impugned order that the petitioner was not covered under the Incentive Scheme of 1997 and, therefore, the petitioner could not be granted exemption from the statutory levy obligation

and the petitioner was required to sell 10% of its sugar production to the Government at the notified levy sugar price for sale by the Government under its Public Distribution System (PDS).

7. Mr Valmiki Mehta, the learned senior counsel appearing on behalf of the petitioner, made submissions with regard to the concessions / exemptions sought by it in respect of both non-levy sugar as well as levy sugar. With regard to non-levy sugar, he drew my attention straightway to the provisions of sub-section (3E) of section 3 of the said Act. The said provision reads as under:-

> "(3E) The Central Government may, from time to time, by general or special order, direct any producer or importer or exporter or recognised dealer or any class of producers or recognised dealers, to take action regarding production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar in the manner specified in the direction.
>
> *Explanation*.—For the purposes of sub-section (3D) and this sub-section,—
>
> (a) "producer" means a person carrying on the business of manufacturing sugar;
>
> (b) "recognised dealer" means a person carrying on the business of purchasing, selling or distributing sugar;
>
> (c) "sugar" includes plantation white sugar, raw sugar and refined sugar, whether indigenously produced or imported."

8. Mr Mehta submitted that a plain reading of the aforesaid provision would indicate that the Central Government may, from time to time, by general or special order, *inter alia*, direct any "producer" to take action regarding production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar in the market. He submitted that such directions could be issued only to producers. In this context, he referred to the explanation appended to section 3 (3E) of the said Act which defined "producer" to mean a person carrying on the business of manufacturing sugar. He submitted that the Central Government has been issuing directions purportedly under this provision each month with regard to the stocks that are required to be maintained by producers. These directions are referred to as monthly release orders. He referred to the Release Order dated 01.06.2006 by way of sample to indicate the nature of these release orders. An examination of the Release Order dated 01.06.2006 shows that a large number of sugar units have been listed. The petitioner's unit finds mention at Serial Number 89. It appears that the production of sugar from 01.01.2006 to 15.05.2006 by the petitioner at its unit at Parsendi came to 7276 tonnes. Out of this, the entitlement for free-sale sugar came to 6548.4 tonnes. The entitlement is calculated after deducting 10% of the levy sugar from the total production of 7276.0 tonnes. Out of this entitlement, the petitioner was given a free-sale allocation of 893.5 tonnes and the petitioner was required to maintain a balance of 5654.9 tonnes. Similar release orders are issued month to month. Mr Mehta

submitted that though the petitioner was left with 6548.4 tonnes, after deducting the levy sugar amount, the petitioner was given a free-sale allocation of only 893.5 tonnes and it had to maintain stocks of 5654.9 tonnes. The outcome of this, according to Mr Mehta, was that the petitioner could only utilise 893.5 tonnes of sugar for its captive consumption in its biscuit manufacturing units and had to purchase the balance requirement of sugar from the open market at higher prices even though it had stocks of 5654.9 tonnes of sugar available with it. He submitted that this is an ongoing process and the amount of stocks has accumulated. He submitted that as of February/March, 2007, the petitioner had accumulated a stock of 1,54,556 bags of 100 kilograms each of sugar which it could not use because of the monthly release orders.

9. Mr Mehta then submitted that the said Act was amended by the Essential Commodities (Amendment) Act, 2003 (Act 37 of 2003). He referred to the Statement of Objects and Reasons of the Amendment Act, 2003. It was indicated therein that the said Act of 1955, *inter alia*, provided for maintaining or increasing supplies of essential commodities or for securing their equitable distribution and availability at fair prices and for this purpose, the Government could issue orders, regulating or prohibiting the production, supply and distribution of each of the essential commodities and trade and commerce therein so as to achieve the objectives of the Act. The Statement of Objects and Reasons further indicated that the Government had been following a policy of

partial control of sugar since 1966 and requisitioning a portion of the sugar as levy sugar for the PDS. It was also noted that the Central Government had adopted a Regulated Release Mechanism for release of levy-free sugar (free-sale sugar) by issuing orders under the Sugar (Control) Order, 1966. It was further noted that challenges to the Regulated Release Mechanism in the courts had led to difficulties in its operation resulting in "a decline in sugar prices", which in turn, had affected the capacity of the producers of sugar to pay cane price to the sugarcane growers. It was further mentioned in the Statement of Objects and Reasons that in order to safeguard the interests of the sugarcane growers, producers of sugar and the general public, to re-stabilise the "market price of sugar" and to overcome the difficulties arising on the said challenge, it had become necessary to incorporate provisions in the Essential Commodities Act, 1955, enabling the Central Government to issue orders or directions to implement the Regulated Release Mechanism Policy of the Government effectively. It is pursuant to these objects and reasons that sub-section (3D) and sub-section (3E) were inserted in Section 3 of the Essential Commodities Act, 1955. It is consequent upon the aforesaid amendments that the monthly release orders are being issued in exercise of powers conferred under Section 3 (3E) of the said Act. In the context of the above-mentioned Statement of Objects and Reasons, Mr Mehta submitted that the object of introducing sub-sections (3D) and (3E) in Section 3 of the said Act must not be lost sight of. The object being that the decline in sugar prices needed to be arrested and the market price of

sugar required to be re-stabilised keeping in mind the interests of the sugarcane growers, producers of sugar and the general public. It was, therefore, contended by Mr Mehta that the object of the entire operations conducted through the modicum of monthly release orders was the regulation of the price of sugar in the market. He submits that the petitioner produces sugar at its unit at Parsendi only for the purposes of its own use for the manufacture of biscuits at its various units. The sugar produced by it is not intended for the market at all and, therefore, would not enter the market. This being the case, its production of sugar would have no bearing on the price of sugar in the market. He submitted that in essence the fact that the petitioner's production was to be entirely captively consumed meant that the sugar produced by the petitioner would bypass the market system and, therefore, have no effect on the price either way. He submitted that it is because of this also that the petitioner ought to be exempted from the operation of the monthly release Mechanism.

10. Mr Mehta referred to the decision of the Supreme Court in the case of ***State of Punjab v. Guno Majra Cooperative Agriculture Service Society Ltd*: 2000 (9) SCC 210**. In that case, the question that arose before the Supreme Court was whether the Agriculture Society was "a dealer" within the meaning of clause 2 (f) of the Fertilizer (Control) Order, 1985 for the purposes of clause 7 of the said Order. Clause 2 (f) defined "dealer" as, *inter alia*, meaning a person carrying on the business of selling fertilizers and including a

manufacturer "carrying on such business". Clause 7 of the order imposed the restriction on persons, including manufacturers, from offering for sale or carrying on the business of fertilizers except in accordance with the terms and conditions of a certificate of registration granted under clause 9. It was not disputed that the Agriculture Service Society was not permitted, under its bye-laws, to sell fertilizers in the open market or to anybody else other than its members. In this context, the Supreme Court held as under:-

> "3. ... From the aforesaid function of the Society it is apparent that there is no commercial or business activity involved when the Society distributes and supplies fertilisers to its members. The purpose for which the Society has been formed is to help its members in the matter of cultivation. In fact, fertilisers purchased by the Society are for supply and distribution to its members and not for any commercial or business activity. In the absence of any business activity, the respondent Society could not be said to be a "dealer" within the meaning of clause 2 (f) of the Order and, therefore, they were not required to take licence under clause 7 of the Order. We are in agreement with the views taken by the High Court."

11. Referring to the above, Mr Mehta submitted that since the Supreme Court found that there is no commercial or business activity involved when the society distributed and supplied fertilizers to its members, the Supreme Court came to the conclusion that the society could not be said to be "a dealer". Similarly, he contended that the entire production of the petitioner at its unit at Parsendi is not meant to be taken to the open market, but is meant only for its own consumption and, therefore, the petitioner cannot be construed as being a

person “carrying on the business of manufacturing sugar”. Consequently, the petitioner cannot be regarded as a “producer” within the meaning of Section 3 (3E) of the said Act.

12. I am unable to agree with this contention of Mr Mehta because there is clear distinction between the definition of “dealer” as appearing in the case before the Supreme Court and the definition of “producer” as appearing in Section 3 (3E) of the said Act. The word “dealer” had reference to a person carrying on the business of selling fertilizers. The stress was on the business of selling, whereas the word “producer” as appearing in Section 3 (3E) of the said Act has reference to a person “carrying on the business of manufacturing sugar”. The business of selling and the business of manufacturing are entirely different and distinct. A person carrying on the business of selling may have nothing to do with production or manufacture, a person carrying on the business of manufacturing may, likewise, have nothing to do with the business of selling. Insofar as the business of selling is concerned, the activity of sale in the open market is relevant to indicate as to whether any person is engaged in such business or not, but in the case of the business of manufacturing, the activity of selling is not relevant. What is relevant is the activity of manufacture, of bringing into existence a new product. Whether the same is captively consumed or it is sold in the open market would have no bearing on the fact that it has been produced because of a manufacturing activity. It is,

therefore, clear that the decision in the case of ***State of Punjab v. Guno Majra*** *(supra)* has no application to the present case.

13. Mr Mehta then referred to the decision of the Supreme Court in the case of ***State of U.P. and another v. Gulshan Sugar & Chemicals Ltd*****: 1995 (4) SCC 529**. In that case, the definition of dealer, as appearing in the Uttar Pradesh Coal Control Order, 1977 came up for consideration. The definition of "dealer" included a person carrying on the business of import, purchase or storage for sale and sale of coal in wholesale. Gulshan Sugar and Chemicals Limited consumed coal for running its factory. Sometimes the quality of the coal supplied was not of the kind required by the said company. The same was, therefore, rejected. Furthermore, a huge quantity of coal dust was also collected during storage, loading and unloading of coal. The coal dust is also produced when coal is broken into pieces of required size. The rejected coal and coal dust being of no use to the said Gulshan Chemicals Ltd was disposed of by it without obtaining any licence under the Uttar Pradesh Coal Control Order, 1977. The question was as to whether the said company was "a dealer" or not? The High Court, in that case, held the said company not to be a "dealer", *inter alia*, because it did not carry on the business of sale or storage for sale. The Supreme Court in this context observed as under:-

> "8. The High Court, in taking the view it did, has referred to the decision of this Court in *Manipur Admn. v. M. Nila Chandra Singh: AIR 1964 SC 1533,* in which while

> interpreting the meaning of the word business as finding place in Manipur Foodgrains Dealer Licencing Order, it was held that mere selling of articles or storing of the same would not make it a business, as this concept postulates continuity of transaction. It was stated that a casual solitary transaction would not make a person a dealer. There being nothing on record to show if there was continuity in transactions of sale of coal dust or rejected coal by the respondent, we agree with the High Court that the respondent was not in the business of sale or storage for sale of coal. What has been stated in the concluding part of the definition of 'dealer' also lends assurance to the view taken by the High Court."

14. Mr Mehta, referring to the above extract, submitted that any business requires continuity of transactions and casual or solitary transactions of selling the rejected coal, in the above case, was not considered to be business by the Supreme Court. Similarly, he submitted that the petitioner was not involved in the sale of sugar at all and, therefore, there was no question of the petitioner being involved in the business of manufacturing sugar.

15. This submission of Mr Mehta is also not tenable. The decision in the case of ***State of U.P. and Another v. Gulshan Sugar*** *(supra)* only indicates that before it can be said that a person is involved in the business of sale of any particular article, it must be established that there is a continuity of transactions of sales by the said person. Solitary or casual sales made by such a person would not mean that the person is involved in the business of sale of the articles. This has no application to the facts of the present case which is

concerned, not with the business of sale, but with the business of manufacturing sugar. A parallel could be drawn to the extent that solitary or casual events of manufacture of sugar would not mean that the person who engages in such solitary or casual acts carries on a business of manufacturing sugar. But that is not the case here. Admittedly, the petitioner is involved in the regular production of sugar at its unit at Parsendi which is exclusively set up for the purposes of manufacturing sugar. The activity carried on by the petitioner at its unit at Parsendi cannot be, by any stretch of imagination, regarded as a solitary or casual act. It is a regular, continuous and conscious stream of activity carried out for the purposes of producing sugar. Therefore, the petitioner cannot but be regarded as being involved in the business of manufacturing sugar. Whether this sugar manufactured by it is sold in the open market or it is consumed captively by the petitioner itself, is not material for determining whether the petitioner is in the business of manufacturing sugar.

16. Mr Mehta then referred to the decision of the Supreme Court in the case of ***Belsund Sugar Company Ltd v. State of Bihar & Others*****: 1999 (9) SCC 620**. He referred to paragraph 86 of the said decision to point out that it is the ultimate sale of the manufactured article, namely, sugar by way of levy sugar or in the free market that is sought to be controlled by the Control Orders. In this context, he submitted that since the petitioner's unit was entirely for captive consumption, there was no necessity for regulating its release because,

in any event, the petitioner would not release its free-sale allocation in the open market. With regard to levy sugar, Mr Mehta submitted that the petitioner was entitled to the moratorium under the Incentive Scheme of 1997. He submitted that the petitioner's unit commenced production on 25.01.2006. The sugar industry was delicenced in 1998 and the concession given to sugar units under the 1997 Incentive Scheme applied to all sugar mills / units whether set up during the licencing period upto 1998 or thereafter.

17. Mr P.P. Malhotra, the learned Additional Solicitor General appeared on behalf of the Central Government. He made references to the said Act. He referred to the objectives by referring to the Preamble to indicate that the Act was to provide for the control of production, supply, distribution, trade and commerce in certain commodities and that such control was in the interest of the general public. He referred to Section 2 (e) of the said Act to show that it was an essential commodity. He referred to the provisions of Section 3(1) of the said Act which reads as under:-

> "3. Powers to control production, supply, distribution, etc., of essential commodities.—(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the 'efficient conduct of military operations it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."

Referring to the above provision, Mr Malhotra submitted that the Central Government had power to issue orders regulating or prohibiting the production, supply and distribution thereof and trade and commerce in any essential commodity for the objectives of maintaining or increasing supplies of such commodities or for securing its equitable distribution and availability at fair prices or for the purposes of defence of India or efficient conduct of military operations. He submitted that, from time to time, in exercise of this power, the Central Government had been issuing sugar control orders. But they became the subject matter of challenges in courts and that was causing some difficulty. It is because of this reason that amendments were brought out in 2003. He referred to the Statement of Objects and Reasons of the 2003 Amendment which I have already referred to above in detail. The point that Mr Malhotra made was that the essential power that is given to the Central Government to issue orders is given under Section 3 (1) of the said Act. However, without prejudice to the generality of the powers conferred by sub-section (1) of Section 3 of the said Act, it has been provided under sub-section (2) that an order may provide for any other matters enumerated therein. Under Section 3 (2) (f), an order passed under Section 3 (1) may provide for requiring any person holding in stock, or engaged in production or in the business of buying or selling of any essential commodity, to sell the whole or specified part of the quantity held in stock or produced or received by him or in case of any such commodity which

is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him, to the Central Government or a State Government or to an Officer or Agent of such Government or to a Corporation and / or controlled by such Government or to such other person or class of persons as may be specified in the order.

18. He submitted that the Government had ample power to issue orders / directions in respect of essential commodities, including sugar to ensure that the market operated in a manner which was in the best public interest. It is for this reason that the Central Government has been given the power to regulate the market in various ways, including the requirement of producers to maintain stocks, the requirement to requisition supplies for the purposes of the PDS, the requirement to release certain quantities for free-sale in the open market, etc. He submitted that the release orders are issued under Section 3 (3E) of the said Act and an all India record of all the factories / manufacturing units are maintained by the Central Government. In essence, what Mr Malhotra meant was that the Central Government had the power to control the amount of sugar that was to be made available through the two channels, i.e., under the PDS through Fair Price Shops (FPS) at a regulated price or in the open market through the regulation of the Regulated Release Mechanism. He submitted that the Central Government could compel producers to sell and dispose of stocks of sugar to regulate the prices of the same in the open market. So, the argument

that the petitioner does not intend to sell the sugar produced by it in the open market is of no consequence. According to Mr Malhotra, the petitioner can be compelled to release the stocks of sugar held by it in the open market if the exigencies of the situation require so as to maintain prices of sugar at a desired level. Mr Malhotra submitted that by virtue of the said Act, the entire supply of sugar in India was controlled by the Central Government.

19. He submitted that the argument advanced by Mr Mehta with regard to the petitioner not being a producer because it was not carrying on the business of manufacturing the sugar is not tenable. Whether a manufacturer or producer of sugar sells the sugar made by it in the open market or consumes it captively, according to Mr Malhotra, makes no difference. What is relevant is whether the person is engaged in the manufacturing activity. The petitioner is clearly covered by the expression "producer" used in Section 3 (3E) of the said Act and, therefore, cannot be exempted from operation of the monthly release orders issued under that provision.

20. With regard to levy sugar, Mr Malhotra essentially reiterated the observations of the Chief Director (Sugar) in the impugned order. He submitted that the Sugar Incentive Scheme, 1997 was to apply only to units which were licenced / to be licenced after 31.03.1994. Mr Malhotra then referred to the Incentive Scheme, 1997 notified on 28.02.1997. In particular, he

referred to paragraph 2 (a) which indicated that the eligible factories were: New Sugar Factories or Expansion Projects. New Sugar Factory was specified to mean a sugar factory established for the first time by erection of a new sugar plant in accordance with a Letter of Intent / Industrial Licence issued by the Government of India, Ministry of Industry under Section 11 (1) of the Industries (Development and Regulations) Act, 1951. The petitioner's case was clearly not covered under "Expansion Projects". The petitioner was also not a "new sugar factory" as the petitioner neither had a Letter of Intent nor an Industrial Licence issued under Section 11 (1) of the Industrial (Development and Regulations) Act, 1951. Thus, according to Mr Malhotra, the petitioner's sugar mill was clearly ineligible for the incentive scheme.

21. Furthermore, with reference to paragraph 3 of the said scheme which pertain to applicability, Mr Malhotra submitted that the scheme was clearly not applicable to the petitioner's case. Paragraph 3 of the scheme reads as under:-

> "**3. APPLICABILITY OF THE SCHEME**
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> (i) The Incentive Scheme shall be applicable to the sugar factories to whom letters of intent / industrial licences have been issued to the new units and expansion units including those sanctioned after March, 1994.
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> (ii) The sugar factories which have been issued letters of intent / industrial licences during the period 07.09.1990 to 31.3.1994 will have an

> option to avail of incentive under 1993 Incentive Scheme or the incentive now being proposed in this Scheme, subject to the condition that the same are implemented by 31.12.1999."

Mr Malhotra submitted that the Incentive Scheme of 1997 was a specific scheme and was not for general application. The petitioner's unit was not an eligible unit nor was the scheme applicable to the petitioner because no Letter of Intent / Industrial Licence had been issued to the petitioner. The terminal dated 31.03.1994 was introduced because sugar factories which had been issued Letters of Intent / Industrial Licences during the period 07.09.1990 to 31.03.1994 had the option to avail of the incentives either under 1993 Scheme or the 1997 Scheme, subject to the condition that the same was implemented by 31.12.1999. Clearly, any unit coming up after 31.12.1999 was not covered even if it had a Letter of Intent or a Licence. Therefore, Mr Malhotra submitted that the petitioner was not entitled to seek any benefit under the 1997 Scheme.

22. Having considered the arguments advanced by the counsel for the parties, I am of the view that no interference with the impugned order dated 17.08.2006 passed by the Chief Director (Sugar) is called for. First of all, with regard to the submission of Mr Mehta that the petitioner cannot be regarded as a producer under Section 3 (3E) of the said Act, I find myself unable to agree with him. The two cases referred to by him are not applicable to the facts of the present case as already explained above. In my view, the petitioner is clearly

covered by the expression “producer” as appearing in Section 3 (3E) of the said Act because the petitioner does carry on the business of manufacturing sugar. This being the case, the petitioner cannot escape its obligations under the monthly release orders issued in exercise of powers granted to the Central Government by virtue of Section 3 (3E) of the said Act.

23. Secondly, Mr Mehta's contention that because the petitioner produces sugar only for captive consumption, it does not affect the market at all, is also not well-founded. The market is affected both by supply and by demand. In a competitive market, it is the supply and demand factors alone which determine the market price. In India, a hybrid system is followed insofar as sugar is concerned. 10% of the sugar that is produced is reserved for distribution through Fair Price Shops under the PDS. The said sugar, which is known as levy sugar is sold at regulated prices. The balance part of the sugar market in India is unregulated in one sense though regulated in another. It is unregulated insofar as the price is concerned. However, it is regulated because the Central Government regulates the quantity of sugar that is released in the open market. While levy sugar regulation is price-driven, non-levy sugar regulation is supply-driven. In this context, if the petitioner's case is examined, it will be seen that by the petitioner producing sugar for its captive consumption, the petitioner would reduce the demand for sugar in the market. This is so because had the petitioner not produced the sugar for its captive

consumption, it would have had to purchase the same from the market. A reduction in demand would necessarily mean a lowering of the price of sugar. The object, as indicated in the Statement of Objects and Reasons of the 2003 Amendment is to maintain prices. In a free market system, prices can be depressed either by increasing the supply or by lowering the demand. Thus, the argument of Mr Mehta that the petitioner's objective of captive consumption does not interfere with the market is not tenable.

24. Apart from this, in order to control the supply side, the Central Government requires manufacturers of sugar to maintain certain stocks. These stocks are required to be maintained to ensure that during the off season, there is no dearth in supply and during the season, there is no glut in the market. The objective being to maintain stability in the prices of sugar. Under the said Act, the Central Government has the power to require any producer of sugar to maintain a particular stock of sugar. It also has the power to direct such a producer of sugar to release its stock of sugar in the market. The entire objective being that the Central Government should have full control on the supply side so as to regulate the market insofar as sugar is concerned. For this reason also, the argument of Mr Mehta is not tenable.

25. Thirdly, with regard to the issue of levy sugar, I find that the approach adopted in the impugned order dated 17.08.2006 cannot be faulted.

The petitioner is clearly not covered under the 1997 Incentive Scheme and it cannot claim any exemption from the obligation of providing 10% of its production for the PDS. The arguments advanced by Mr Malhotra and the reasoning adopted in the impugned order indicating that the petitioner is not covered under the 1997 Incentive Scheme are clearly in order.

26. For the reasons stated hereinabove, this writ petition is dismissed with costs which are quantified at Rs.20,000/-.

BADAR DURREZ AHMED
(JUDGE)

April 26, 2007
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